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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,623	07/15/2004	Philippe Moussou	C 2319 PCT/US	2222

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COGNIS CORPORATION
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EXAMINER	
MI, QIUWEN	
ART UNIT	PAPER NUMBER
1655	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/501,623	MOUSSOU ET AL.	
	Examiner	Art Unit	
	Qiuwen Mi	1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 August 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *41,43-48,53,54 and 56-62* is/are pending in the application.

4a) Of the above claim(s) *57-60* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *41,43-48,53,54, 56, 61, and 62* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Applicant's amendment in the reply filed on 8/9/07 is acknowledged. Any rejection that is not reiterated is hereby withdrawn.

Election/Restrictions

Applicant's election with traverse of claims 41, 43-48, 53, 54, 56, and new claims 61 and 62 in the reply filed on 4/3/2007 is maintained. The traversal is on the ground(s) that Examiner failed to provide examples how different invention groups are distinct and different. This is not found persuasive because in a 371 case, as long as there is no special technical feature in the application, which was stated clearly in the previous office action, accordingly the groups are not so linked as to form a single general concept under PCT Rule 13.1., and therefore lack of unity of invention exists.

The requirement is still deemed proper and is therefore made FINAL.

Applicant's argument regarding election of species is found convincing, therefore the requirement for the election of species is hereby withdrawn.

Claims Pending

Applicant has cancelled claims 1-40, 42, 49-52, and 55. Claims 41, 43-48, 53, 54, and 56-62 are pending. Claims 57-60 are withdrawn. Claims 41, 43-48, 53, 54, 56, 61, and 62 are examined on the merits.

Claim Rejections –35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 41, 43-48, 53, 54, 56, 61, and 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klaenhammer et al (US 5,618,723) in view of Uno et al (US 2001/0041203), further in view of Miyazaki et al (US 7,090,875).

Klaenhammer et al (US 5,618,723) disclose rice fermentation prepared by yeasts such as *Saccharomyces cerevisiae* and *Candida utilis*, and lactic acid bacterial of genera lactobacillus, lactococcus, leuconostoc etc (col 9, lines 42-48).

Klaenhammer et al do not teach pH, pretreatment, temperature, and separation method, and Klaenhammer et al do not explicitly teach that lactobacillus, lactococcus, leuconostoc, and yeast are all used together.

Uno et al teach adding water and yeast to rice, heating at 90°C for 30 min (pretreatment), fermenting at 20°C for 2 days, and then being filtered [0129; 0130]. Uno et al also teach that the invention being used in cosmetics [0076; 0077; 0079; 0080]. Uno et al also teach that liquefying process (pretreatment) can facilitate fibrous hydrolase activity and ferulic acid esterase activity,

and contribute to decomposition of fibers in cereals and liberation of ferulic acid [0071] which can be further used in cosmetics [0076]

Miyazaki et al teach a fermented product prepared by microorganisms such as lactobacillus, lactococcus, and leuconostoc, or by several kinds of strains in combination at pH preferably 5.0-6.0 (col 5, lines 50-55). Miyazaki et al also teach that the fermented product can improve dry, roughed, wrinkled, or loosened skin and prevent the skin from aging (col 2, lines 47-55).

It would have been *prima facie* obvious for one of ordinary skill in the art at the time the invention was made to use the pretreatment, and the separation (filtering) method of Uno and the pH of Miyazaki et al in Klaenhammer et al for the following reasons.

It is clear from Uno et al that liquefying process (pretreatment) can facilitate fibrous hydrolase activity and ferulic acid esterase activity, and contribute to decomposition of fibers in cereals and liberation of ferulic acid [0071] which can be further used in cosmetics [0076], therefore it is obvious for one of ordinary skill in the art at the time the invention was made to follow the procedure of Uno et al in Klaenhammer et al to make the fermented rice extract so that the rice fermentation product in Klaenhammer et al can be used in cosmetics.

It is further clear from Miyazaki et al that keeping the fermented product at pH 5-6 suits for cosmetic skin application in cosmetic products, therefore it is obvious for one of ordinary

skill in the art at the time the invention was made to use the pH of Miyazaki et al in the fermented product in Klaenhammer et al to achieve the antiaging effect in cosmetics.

Since the both the inventions of Uno et al and Miyazaki et al yielded beneficial results in the cosmetic industry, one of ordinary skill in the art would have been motivated to make the modifications.

It would be obvious to combine lactobacillus, lactococcus, leuconostoc, and yeast together, as Klaenhammer et al teach each of them individually as examples in the fermentation preparations. Choosing from a finite number of predictable solutions would have been obvious because a person of ordinary skill has good reason to pursue the known options with his or her technical grasps. If this leads to the anticipated success, it is likely the product not of innovation, but of ordinary skill and common sense.

Regarding determining the pH of the fermented product, the result-effective adjustment in conventional working parameters is deemed merely a matter of judicious selection and routine optimization which is well within the purview of the skilled artisan, depending upon type and the amount of the bacteria used for fermentation.

From the teachings of the references, it is apparent that one of the ordinary skills in the art would have had a reasonable expectation of success in producing the claimed invention.

Thus, the invention as a whole is *prima facie* obvious over the references, especially in the absence of evidence to the contrary.

Answer to Applicant's argument

Applicant argues that none of the cited references discloses the specific combination of microorganisms comprising at least one Lactobacillus, at least one Lactococcus, at last one Leuconostoc, and at least one yeast, thus none of the references anticipates the invention. Applicant's arguments have been fully considered and are persuasive, and the 102 rejections have been withdrawn.

Applicant also argues Miyazaki does not disclose rice plants or rice extract. Applicant's arguments have been fully considered but they are not persuasive, as it is clear from Miyazaki et al that keeping the fermented product at pH 5-6 suits for cosmetic skin application in cosmetic products, therefore it is obvious for one of ordinary skill in the art at the time the invention was made to use the pH of Miyazaki et al in the fermented product in Klaenhammer et al to achieve the antiaging effect in cosmetics. In addition, regarding determining the pH of the fermented product, the result-effective adjustment in conventional working parameters is deemed merely a matter of judicious selection and routine optimization which is well within the purview of the skilled artisan, depending upon type and the amount of the bacteria used for fermentation.

Applicant also argues that none of the cited references discloses the specific combination of microorganisms comprising at least one Lactobacillus, at least one Lactococcus, at last one Leuconostoc, and at least one yeast. Applicant's arguments have been fully considered but they are not persuasive, as Klaenhammer et al teach each of them individually as examples in the fermentation preparations. Choosing from a finite number of predictable solutions would have been obvious because a person of ordinary skill has good reason to pursue the known options

with his or her technical grasps. If this leads to the anticipated success, it is likely the product not of innovation, but of ordinary skill and common sense.

Applicant's arguments have been fully considered but they are not persuasive, and therefore the 103 rejection in the record are maintained.

Conclusion

No claim is allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Qiuwen Mi whose telephone number is 571-272-5984. The examiner can normally be reached on 8 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Qiuwen Mi

/Patricia Leith/
Patricia Leith
Primary Examiner
AU 1655